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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/910,281 | 07/19/2001 | Peter Robert Foley | CM2492 | 2076 |

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

| EXAMINER | |
|---|---|
| DELCOTTO, GREGORY R | |
| ART UNIT | PAPER NUMBER |
| 1751 | |

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| Offic Action Summary | Application No. 09/910,281 | Applicant(s) FOLEY ET AL. | |
|---|---|---|---|
| | Examiner Gregory R. Del Cotto | Art Unit 1751 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *24 March 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *51-91* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *51-91* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

## DETAILED ACTION

1. Claims 51-91 are pending.

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/24/03 has been entered.

### *Priority*

Acknowledgment is made of applicant's claim for foreign priority based on an application PCT/US00/34906, filed 12/21/00, PCT/US00/19619, filed 7/19/00, and PCT/US00/20255, filed 7/25/00. It is noted, however, that applicant has not filed certified copies of the applications as required by 35 U.S.C. 119(b). Thus, priority has not been granted.

### Objections/Rejections Withdrawn

The following objections/rejections as set forth in Paper #7 have been withdrawn:

The rejection of claims 51-79 and 81-86 under 35 USC 103(a) as being unpatentable over Wierenga et al (US 5,919,312) has been withdrawn.

The rejection of claims 51-79 and 81-87 under 35USC 103(a) being unpatentable over Kacher (US 5,891,836) has been withdrawn.

The rejection of claim 80 under 35 USC 103(a) as being unpatentable over Kacher (US 5,891,836) as applied to claims 51-79 and 81-87 above, and further in view of Nicholson et al (US 5,741,767) has been withdrawn.

The rejection of claims 88-91 under 35 USC 103(a) as being unpatentable over Kacher as applied to the rejected claims, and further in view of Trinh et al (US 6,001,789) has been withdrawn.

***Claim Rejections - 35 USC § 102***

> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in-
> (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
> (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the

> subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 51-61, 63-68- 70-72, 74-79, 81-85, and 87 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Feng (US 5,929,007).

Feng teaches alkaline aqueous hard surface cleaning compositions which exhibit good cleaning efficacy against hardened dried or baked on greasy soil deposits. The compositions comprise 0.01 to 0.85% by weight of amine oxide, 0 to 1.5% by weight of chelating agent, 0.01% to 2.5% by weight of caustic, 3% to 9% by weight of glycol ether solvent system comprising one glycol ether or glycol ether acetate solvent having a solubility in water of not more than 20% by weight water and a second glycol ether or glycol ether acetate having a solubility of approximately 100% by weight wherein the ratio of the former to the latter is from 0.5:1 to 1.5:1, 0 to 5% by weight of a water-soluble amine containing organic compound, 0 to 2.5% by weight of a soil anti-redeposition agent, and 0 to 2.5% of optional constituents. See Abstract. The caustic

agent is present in the compositions to ensure that the overall pH of the compositions is at least 11.5 or greater. Suitable solvents which exhibit a solubility in water of approximately 100% by weight include diethylene glycol n-butyl ether. See column 4, lines 20-65. The compositions preferably include a soil antiredeposition agents which may be synthetic hectorite, colloidal silica, etc. See column 5, lines 50-69. Another desirable additive is a thickening agent such as those based on alginates and gums including xanthan gum. See column 6, lines 5-40.

Specifically, Feng teaches 2.0% amine oxide, 0.5% EDTA salt, 0.8% NaOH, 3.0% monoethanolamine, 3.0% glycol ether, low water soluble, 3.7% glycol ether, high water soluble, the balance water. See column 9, lines 35-50. The low water soluble glycol ether is propylene glycol n-butyl, the high water soluble glycol ether is dipropylene glycol methyl ether, etc. Note that, the Examiner asserts that the composition as exemplified by Feng would inherently have the same pH, liquid surface tension, and other physical parameters as recited by the instant claims because Feng teaches a composition containing the same components in the same proportions as recited by the instant claims.

Alternatively, even if the broad teachings of Feng is not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed pH and surface tension of the composition in order to provide the optimum cleaning properties to the composition because Feng teaches that the amount of required components added to the composition may be varied.

2. Claims 62, 69,73, and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feng (US 5,929,007).

Feng is relied upon as set forth above. However, Feng does not specifically teach a detergent composition containing a thickener, solvent, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition a thickener, solvent, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Feng suggest a detergent composition containing a thickener, solvent, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 88-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feng (US 5,929,007) as applied to claims 51-85 and 87 above, and further in view of Trinh et al (US 6,001,789).

Feng is relied upon as set forth above. However, Feng does not specifically teach the use of ionone perfumes, musk, or cyclodextrin in addition to the other requisite components of the composition as recited by the instant claims.

Trinh et al teach a cleaning composition in which a perfumes including ionones and musks are absorbed into a cyclodextrin carrier material to form complexes. See abstract and col. 7, line 35 to col. 12, line 55.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a perfume-cyclodextrin complex in the cleaning composition taught by Feng, with a reasonable expectation of success, because Trinh et al teach the use of a perfume-cyclodextrin complex a similar cleaning composition and further, Feng teaches the use of perfumes in general.

Claims 86 rejected under 35 U.S.C. 103(a) as being unpatentable over Feng (US 5,929,007) as applied to claims 51-85 and 87 above, and further in view of Ofosu-Asante (US 5,739,092).

Feng is relied upon as set forth above. However, Feng does not teach the use of a divalent cation in addition to the other requisite components of the composition as recited by instant claim 86.

Ofosu-Asante teaches liquid or gel dishwashing detergent compositions containing alkyl ethoxy carboxylate surfactant, calcium or magnesium ions, etc. See Abstract. The presence of calcium or magnesium ions improves the cleaning of greasy soils for compositions, manifest mildness to the skin, and provide good storage stability. See column 6, lines 40-55.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a magnesium or calcium ion(s) in the cleaning compositions taught by Feng, with a reasonable expectation of success, because Ofosu-Asante

teaches the advantageous properties imparted to a similar hard surface cleaner when using magnesium and/or calcium ions.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 51-91 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims claims 23-28 of 09/909233, claims 22-27 of 09/909288, claims 1-26, 32, and 33 of 10/109344, claim 16 of 10/197029, and claims 14-20, 22, and 23 of 10/253113. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-44 of 09/910281, claims 23-28 of 09/909233, claims 22-27 of 09/909288, claims 1-26, 32, and 33 of 10/109344, claim 16 of 10/197029, and claims 14-20, 22, and 23 of 10/253113. encompass the material limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Response to Arguments***

Note that, Applicant's arguments are moot in view of the new grounds of rejection as set forth above.

With respect to the double-patenting rejections, Applicant states that this rejection is not ripe. In response, note that, a full, first action on the merits includes all pertinent and possible rejections including provisional double patenting rejections; thus, the Examiner maintains that the rejection is proper.

***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703)

872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

GREGORY DELCOTTO
PRIMARY EXAMINER

GRD
April 5, 2003